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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,049	09/26/2003	Rod Power	635-001	7144

7590 04/29/2005

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/672,049

Applicant(s)

POWER, ROD

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 28-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 26 Sept. 03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Acknowledgment is made of Applicant's IDS received 26 September 2003.

Election/Restrictions

Applicant's election with traverse of Invention I, claims 1-27, in the reply filed on 24 January 2005 is acknowledged. The traversal is on the ground(s) that the shaped guides are specified in both apparatus and method claims. This is not found persuasive because the shaped guide can be broadly interpreted to be pruning saw which is a materially different apparatus than the apparatus of the instant invention.

The requirement is still deemed proper and is therefore made FINAL. Claims 28-30 are withdrawn from examination.

Specification

The disclosure is objected to because of the following informalities:

In the specification on page 9, line 11, the "restraint mechanism 32" should be --restraint mechanism 33-- to conform with the numerical designation of Figs. 1,3, and 5.

Appropriate correction is required.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "plurality of comb-like slits" of claim 6, line 2, and claim 22, line 2; the "at least one exoskeletal shaped member" of claim 9,

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line 2; and “at least one exoskeletal shaped guide” of claim 25, line 2, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claim 12 is objected to because of the following informality:

In claim 12, line 4, “having cross member” should be --having a cross member--.

In claim 12, line 6, “object” should be --object--.

In claim 14, line 2, “releasable connection” is not referenced in the specification.

In claim 15, line 2, "releasable simultaneous connection" is not referenced in the specification.

In claim 13, line 5, the phrase "various shaped guides" should be --the one or more shaped guides-- so as to conform to previous language in line 3.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 11, 13-20, 27 are rejected under 35 U.S.C. §102(b) as being anticipated by O'Brien et al. (US 2,798,354).

As to Claims 1 and 13, O'Brien et al. disclose a tree shaping guide (Figs. 1-9) comprising an elongated support (12 of Figs. 3 and 4) positionable adjacent an object to be shaped; one shaped guide (100, 50, 52 of Figs. 3 and 7); and a connection mechanism (40 and 42 of Figs. 4 and 7) connecting the shaped guide to the elongated support, which comprises movement elements (edges of 100 of Fig. 7) to allow the shaped guide to move relative to the elongated support; wherein the shaped guide allows movement along a shaped path (movement of 100 in Fig. 7) and enables a user to operate a cutting mechanism to shape an object; and, wherein the combination of the shaped guide and support enable a user to operate a cutting mechanism to shape an object.

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As to claim 2, O'Brien et al. further disclose the elongated support as a telescopic post (12, 28, and 32 of Fig. 3) with the shaped guide being mounted on the top end (Fig. 3) of the post.

As to claims 3 and 4, O'Brien et al. further disclose the elongated support on a stand (16 of Figs. 3 and 4) with movement mechanism (24 of Fig. 3).

As to claims 11 and 27, O'Brien et al. further disclose a cutting mechanism (62 of Fig. 3) slidable along the shaped guide.

As to claim 14, O'Brien et al. further disclose the connection mechanism allowing releasable connection (by 50 and 52 of Fig. 7) between the one or more shaped guides and the support.

As to claim 15, O'Brien et al. further disclose the connection mechanism allowing releasable connection (by 52 and other bolts of Fig. 7) simultaneously between a plurality of shaped guides and the support.

As to claim 16, O'Brien et al. further disclose the connection mechanism allowing separate movement (inherent in Fig. 3) of the plurality of shaped guides.

As to claim 17, O'Brien et al. further disclose the connection mechanism allowing releasable connection (edges of 100 for the three shaped guides) between the one or more shaped guides and the support.

As to claim 18, O'Brien et al. further disclose the support as a elongated telescopic post (12, 28, and 32 of Fig. 3) with the shaped guide being mounted on the top end (Fig. 3) of the post.

As to claims 19 and 20, O'Brien et al. further disclose the elongated support on a stand (16 of Figs. 3 and 4) with movement mechanism (24 of Fig. 3).

Claims 13 and 14 are rejected under 35 U.S.C. §102(b) as being anticipated by Uhor (US 3,487,614).

As to Claim 13, Uhor disclose a tree shaping guide (Figs. 1-8) comprising a support (24 of Fig. 1) positionable adjacent an object to be shaped; one shaped guide (128 of Fig. 1); and a connection mechanism (76, 88, 100, 124 of Figs. 1 and 4) connecting the shaped guide to the elongated support, wherein the combination of shaped guide and support enables a user to operate a cutting mechanism to shape the object (col. 6 lines 3-9).

As to claim 14, Uhor further disclose the connection mechanism allowing releasable connection (see 128 in Figs. 4 and 8).

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-10, 21-26 are rejected under 35 U.S.C. §103(a) as being unpatentable over O'Brien et al. (US 2,798,354) in view of Uhor (US 3,487,614).

As to claims 5, 7, 9, 21, 23, 25, the limitations of Claims 1 and 13 are disclosed as described above. O'Brien et al. further disclose the shaped guide comprising at least one

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elongated shaped member (blades of 62 of Fig. 3). Not disclosed is the at least one elongated shaped member with at least one curved portion; forming a partial circumference of a sphere; an exoskeletal shaped member. Uhor, however, discloses an elongated shaped member with a curved portion (128 of Fig. 1), forming a partial circumference of a sphere, an exoskeletal shaped member (guide), and the connection allowing pivotal movement (inherent from 26 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the guide of O'Brien by using the elongated shaped member of Uhor so as to readily control the trimming and shaping of the shrub (col. 1 lines 40-43).

As to claims 6 and 22, the limitations of Claim 1 and 13 are disclosed as described above. Not disclosed is the shaped guide with a plurality of comb-like slits. Uhor, however, discloses an elongated shaped member with any shape depending upon the desires of the home owner (col. 6 lines 40-44). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the guide of O'Brien by using one with a plurality of comb-like slits as disclosed by Uhor so as to readily control the trimming and shaping of the shrub (col. 1 lines 40-43).

As to claim 8 and 24, the limitations of Claims 5 and 17 are disclosed as described above. Not disclosed are a plurality of elongated shaped members forming an exoskeletal partial circumference. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the guide of O'Brien as modified by Uhor by having a plurality of elongated shaped members of Uhor so as to more quick finish the job of trimming and shaping the shrub.

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As to claims 10 and 26, O'Brien as modified by Uhor further disclose a movement elements allowing rotational movement (114, etc of Fig. 1 of Uhor).

Claim 12 is rejected under 35 U.S.C. §103(a) as being unpatentable over Uhor (US 3,487,614) in view of Suter (CH 599744).

As to claim 12, Uhor discloses a tree shrub shaping device (Figs. 1 and 2) comprising an elongated support comprising two spaced posts (24 of Fig. 1) each with an elongated linear foot (28 of Fig. 1) that forms an inverted T shape (Fig. 1), the posts being positionable adjacent an object (Fig. 1) to be shaped and having a cross member (67 of Fig. 1) extending between the two spaced posts for strength, the member further comprising a restraint mechanism (88 of Fig. 1) substantially located such that the restraint mechanism can fit around and restrain an object to be shaped; and, a shaped substantially semi-circular curved guide (128 of Fig. 10) mounted by a connection mechanism (82 and 84 of Fig. 1) connecting the shaped guide to a top of the elongated posts and further comprising movement elements (124 and 100 of Fig. 1) that allow the shaped guide to move pivotally relative to the elongated support such that the shaped guide follows a ball shape (Fig. 1) around the object and that is employable to enable a user to operate a cutting mechanism (col. 6 lines 4-9) to shape the object. Not disclosed are the legs being telescoping. Suter, however, discloses the use of telescoping legs (Fig.) on a hedge clipping guide device (see abstract in English). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the guide of Uhor by using telescoping legs as disclosed by Suter so that the guide can be used with plants of varying heights.

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Claims 15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Uhor (US 3,487,614).

As to claim 15, the limitations of Claim 13 are disclosed as described above. Uhor further discloses the connection mechanism being releasable (see 128 in Figs. 4 and 8). Not disclosed are a plurality of elongated shaped members that are releasable simultaneously. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the guide of Uhor by having a plurality of elongated shaped members so as to more quick finish the job of trimming and shaping the shrub and to have them all.

Conclusion

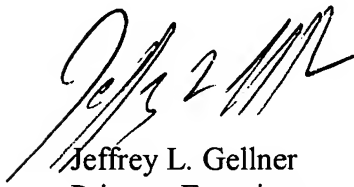
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Warren, Lessard et al., and Wallace disclose in the prior art various cutting guides.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 571.272.6887. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 571.272.6891. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey L. Gellner
Primary Examiner